

House Bill 635 (AS PASSED HOUSE AND SENATE)

By: Representatives Cooper of the 43rd, Benton of the 31st, Jones of the 53rd, Broadrick of the 4th, and Reeves of the 34th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to the
2 "Disabled Adults and Elder Persons Protection Act," so as to provide for the establishment
3 of Adult Abuse, Neglect, and Exploitation Multidisciplinary Teams to coordinate the
4 investigation of and responses to suspected instances of abuse, neglect, or exploitation of
5 disabled adults or elder persons; to provide for a definition; to provide for immunity; to
6 provide for coordination with the director of the Division of Aging Services; to provide for
7 the composition, duties, and responsibilities of such Adult Abuse, Neglect, and Exploitation
8 Multidisciplinary Teams; to provide for memoranda of understanding; to provide for
9 confidentiality of records; to amend Chapter 3 of Title 35 of the Official Code of Georgia
10 Annotated, relating to the Georgia Bureau of Investigation, so as to authorize issuing of a
11 subpoena; to provide for order compelling compliance; to provide for penalty; to provide for
12 related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to the "Disabled
16 Adults and Elder Persons Protection Act," is amended in Code Section 30-5-3, relating to
17 definitions, by adding a new paragraph to read as follows:

18 "(1.1) 'Adult Abuse, Neglect, and Exploitation Multidisciplinary Team' means the
19 multiagency team established in each judicial circuit in this state pursuant to Code
20 Section 30-5-11."

21 style="text-align:center">**SECTION 2.**

22 Said chapter is further amended by revising subsections (b) and (c) of Code Section 30-5-4,
23 relating to reporting of need for protective services, manner and contents of report, immunity
24 from civil or criminal liability, and privileged communications, as follows:

25 "(b)(1)(A) A report that a disabled adult or elder person is in need of protective services
 26 or has been the victim of abuse, neglect, or exploitation shall be made to an adult
 27 protection agency providing protective services as designated by the department and
 28 to an appropriate law enforcement agency or prosecuting attorney. If a report of a
 29 disabled adult or elder person abuse, neglect, or exploitation is made to an adult
 30 protection agency or independently discovered by the agency, then the agency shall
 31 immediately make a reasonable determination based on available information as to
 32 whether the incident alleges actions by an individual, other than the disabled adult or
 33 elder person, that constitute a crime and include such information in their report. If a
 34 crime is suspected, the report shall immediately be forwarded to the appropriate law
 35 enforcement agency or prosecuting attorney. During an adult ~~protective protection~~
 36 agency's investigation, it shall be under a continuing obligation to immediately report
 37 the discovery of any evidence that may constitute a crime.

38 (B) If the disabled adult or person is 65 years of age or older and is a resident, a report
 39 shall be made in accordance with Article 4 of Chapter 8 of Title 31. If a report made
 40 in accordance with the provisions of this Code section alleges that the abuse or
 41 exploitation occurred within a long-term care facility, such report shall be investigated
 42 in accordance with Articles 3 and 4 of Chapter 8 of Title 31.

43 (2) Reporting required by subparagraph ~~(A)(1)~~ (A) of paragraph (1) of this subsection
 44 may be made by oral or written communication. Such report shall include the name and
 45 address of the disabled adult or elder person and should include the name and address of
 46 the disabled adult's or elder person's caretaker, the age of the disabled adult or elder
 47 person, the nature and extent of the disabled adult's or elder person's injury or condition
 48 resulting from abuse, exploitation, or neglect, and other pertinent information.

49 (3) When a report of a disabled adult's or elder person's abuse, neglect, or exploitation
 50 is originally reported to a law enforcement agency, it shall be forwarded by such agency
 51 to the director or his or her designee within 24 hours of receipt.

52 (c) Anyone who makes a report pursuant to this chapter, who testifies in any judicial
 53 proceeding arising from the report, who provides protective services, ~~or~~ who participates
 54 in a required investigation, or who participates on an Adult Abuse, Neglect, and
 55 Exploitation Multidisciplinary Team under the provisions of this chapter shall be immune
 56 from any civil liability or criminal prosecution on account of such report or testimony or
 57 participation, unless such person acted in bad faith, with a malicious purpose, or was a
 58 party to such crime or fraud. Any financial institution or investment company, including
 59 without limitation officers and directors thereof, that is an employer of anyone who makes
 60 a report pursuant to this chapter in his or her capacity as an employee, or who testifies in
 61 any judicial proceeding arising from a report made in his or her capacity as an employee,

62 or who participates in a required investigation under the provisions of this chapter in his
 63 or her capacity as an employee, shall be immune from any civil liability or criminal
 64 prosecution on account of such report or testimony or participation of its employee, unless
 65 such financial institution or investment company knew or should have known that the
 66 employee acted in bad faith or with a malicious purpose and failed to take reasonable and
 67 available measures to prevent such employee from acting in bad faith or with a malicious
 68 purpose. The immunity described in this subsection shall apply not only with respect to
 69 the acts of making a report, testifying in a judicial proceeding arising from a report,
 70 providing protective services, or participating in a required investigation but also shall
 71 apply with respect to the content of the information communicated in such acts."

72 SECTION 3.

73 Said chapter is further amended by revising Code Section 30-5-7, relating to confidentiality
 74 of public records, as follows:

75 "30-5-7.

76 (a) All records pertaining to the abuse, neglect, or exploitation of disabled adults or elder
 77 persons in the custody of the department shall be confidential; and access thereto by
 78 persons other than the department, the director, or the district attorney shall only be by
 79 valid subpoena or order of any court of competent jurisdiction. ~~Nothing in this Code~~
 80 ~~section shall be construed to deny agencies participating in joint investigations at the~~
 81 ~~request of and with the department, or conducting separate investigations of abuse, neglect,~~
 82 ~~or exploitation within an agency's scope of authority, or law enforcement personnel who~~
 83 ~~are conducting an investigation into any criminal offense in which a disabled adult or elder~~
 84 ~~person is a victim from having access to such records.~~

85 (b) The following persons or agencies shall have reasonable access to such records
 86 concerning reports of elder, disabled adult, or resident abuse:

87 (1) A prosecuting attorney in this state or any other state or political subdivision thereof,
 88 or the United States, who may seek such access in connection with official duty;

89 (2) Police or any other law enforcement agency or law enforcement personnel of this
 90 state or any other state who are conducting an investigation into any criminal offense
 91 involving a report of known or suspected abuse, neglect, or exploitation of disabled adults
 92 or elder persons;

93 (3) Agencies participating in joint investigations at the request of and with the
 94 department, or conducting separate investigations of abuse, neglect, or exploitation within
 95 an agency's scope of authority, unless such records are wholly owned by the federal
 96 government; and

97 (4) Coroners or medical examiners in suspicious death investigations.

98 (c) Any individual who made a report according to Code Section 30-5-4 can make a
 99 request to the department to know if the report or reports made by that individual have been
 100 received, whether an investigation was opened or not, and whether the investigation is still
 101 open or has been closed, and the department will respond in writing within five business
 102 days with this information, but no other case information will be released.

103 (d) Any time that the record is released pursuant to this Code section, other than to law
 104 enforcement or to the district attorney or pursuant to a court order for unredacted records,
 105 the name and identifying information of the individual who made the report shall be
 106 redacted.

107 (e) Records or portions of records of abuse, neglect, or exploitation of disabled adults or
 108 elder persons in the custody of the department may be released to members of an Adult
 109 Abuse, Neglect, and Exploitation Multidisciplinary Team established pursuant to Code
 110 Section 30-5-11 for reasonable use in furtherance of the purposes authorized in this Code
 111 section."

112 **SECTION 4.**

113 Said chapter is further amended by adding a new Code section to read as follows:

114 "30-5-11.

115 (a) The district attorney of each judicial circuit may establish, or cause to be established,
 116 an Adult Abuse, Neglect, and Exploitation Multidisciplinary Team for the purposes of:

117 (1) Coordinating the collaborative review of suspected instances of abuse, neglect, or
 118 exploitation of a disabled adult or elder person pursuant to Chapter 5 of Title 16 or Code
 119 Section 30-5-5, 31-7-12.1, or 31-8-83;

120 (2) Coordinating the collaborative review of responses to suspected instances of abuse,
 121 neglect, or exploitation of a disabled adult or elder person, including protective services;
 122 and

123 (3) Identifying opportunities within local jurisdictions to improve policies and
 124 procedures in the notification of and response to abuse, neglect, and exploitation given
 125 local resources.

126 (b) As determined by the district attorney or his or her designee, the Adult Abuse, Neglect,
 127 and Exploitation Multidisciplinary Team shall consist of representatives, from within the
 128 appropriate judicial circuit, representing these suggested categories:

129 (1) The district attorney or his or her designee;

130 (2) Local law enforcement agencies;

131 (3) The Georgia Bureau of Investigation;

132 (4) Adult Protective Services of the department's Division of Aging Services;

- 133 (5) The state funded licensure activities of the Healthcare Facility Regulation Division
 134 of the Department of Community Health;
- 135 (6) The Department of Behavioral Health and Developmental Disabilities;
- 136 (7) The medical examiner or coroner of that county in which the team exists;
- 137 (8) Nonprofit organizations that provide victim services or adult care services;
- 138 (9) Local, regional, and state task forces or coordinating entities regarding at-risk adults;
- 139 (10) Providers of medical, legal, or housing services or housing facilities to disabled
 140 adults or elder persons who are victims of abuse, neglect, or exploitation; and
- 141 (11) Any other entity which the district attorney or his or her designee determines is
 142 necessary for the successful operation of the Adult Abuse, Neglect, and Exploitation
 143 Multidisciplinary Team.
- 144 (c) Each Adult Abuse, Neglect, and Exploitation Multidisciplinary Team shall:
- 145 (1) Meet regularly, as determined by the district attorney or his or her designee;
 146 provided, however, that meetings shall be held at least semiannually; and
- 147 (2) Coordinate on investigations of instances of unlicensed personal care homes, or of
 148 suspected abuse, neglect, or exploitation of disabled adults or elder persons that are based
 149 on reports made pursuant to Chapter 5 of Title 16 or Code Section 30-5-4, 31-7-12.1,
 150 31-8-82, or 31-8-83 or reports made or concerns raised by members of the agencies,
 151 organizations, or entities represented on the Adult Abuse, Neglect, and Exploitation
 152 Multidisciplinary Team.
- 153 (d) The district attorney or his or her designee shall coordinate the creation of a
 154 memorandum of understanding that describes the Adult Abuse, Neglect, and Exploitation
 155 Multidisciplinary Team's procedures and methods of operation in detail, including
 156 confidentiality requirements and the sharing of information among such team's members
 157 in accordance with subsection (e) of this Code section. The memorandum shall be signed
 158 by a representative of each agency, organization, or entity participating in such team.
- 159 (e)(1) All records and information acquired by an Adult Abuse, Neglect, and
 160 Exploitation Multidisciplinary Team pertaining to the abuse, neglect, or exploitation of
 161 disabled adults or elder persons shall be confidential pursuant to Code Sections 30-5-7,
 162 31-8-86, and 37-3-166; furthermore, notwithstanding any other provisions of law,
 163 information acquired by and documents, records, and reports of the team shall be
 164 confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to
 165 open records.
- 166 (2) All records pertaining to the abuse, neglect, or exploitation of disabled adults or elder
 167 persons in the custody of the departments included in the Adult Abuse, Neglect, and
 168 Exploitation Multidisciplinary Team shall be available to the members of an Adult
 169 Abuse, Neglect, and Exploitation Multidisciplinary Team for the purpose of investigating

170 or responding to a report of abuse, neglect, or exploitation of a disabled adult, elder
 171 person, or resident.

172 (3) It shall be unlawful for any member of an Adult Abuse, Neglect, and Exploitation
 173 Multidisciplinary Team to knowingly disclose, receive, make use of, or authorize, or
 174 knowingly permit, participate in, or acquiesce to the use of, any information received or
 175 generated in the course of the Adult Abuse, Neglect, and Exploitation Multidisciplinary
 176 Team's investigations, responses, or activities to any third party; provided, however, that
 177 disclosure may be made to persons and entities directly involved in the administration of
 178 this Code section, including:

179 (A) Persons providing protective services necessary for the disabled adult or elder
 180 person;

181 (B) Representatives of law enforcement;

182 (C) Grand juries or courts in the exercise of official business;

183 (D) Members of such Adult Abuse, Neglect, and Exploitation Multidisciplinary Teams;
 184 and

185 (E) Persons engaged in bona fide research or audit purposes; provided, however, that
 186 only information in the aggregate without identifying information shall be provided for
 187 research or audit purposes and confidentiality of the data shall be maintained.

188 (4) Unless expressly provided otherwise in the memorandum of understanding, members
 189 of an Adult Abuse, Neglect, and Exploitation Multidisciplinary Team may share
 190 information received or generated in the course of such team's investigations, responses,
 191 or activities only among members of such team.

192 (5) To promote efficiency and effectiveness in its mission, an Adult Abuse, Neglect, and
 193 Exploitation Multidisciplinary Team may maintain a data base of information about such
 194 team's past and ongoing cases, provided that identifying information about individual
 195 victims and clients shall not be accessed by any person outside of such team other than
 196 those persons serving as care coordinators or victim advocates or who represent
 197 organizations providing such services.

198 (f)(1) By March 1 of each calendar year, the Adult Abuse, Neglect, and Exploitation
 199 Multidisciplinary Teams shall submit a report to the director of the Georgia Bureau of
 200 Investigation and the commissioner of human services regarding the prevalence and
 201 circumstances of abuse, neglect, or exploitation of disabled adults or elder persons in this
 202 state; shall recommend measures to reduce such crimes; and shall address in the report
 203 the following issues:

204 (A) How many investigations or cases the Adult Abuse, Neglect, and Exploitation
 205 Multidisciplinary Team has received for the calendar year;

206 (B) How many reviews of investigations or cases recommended criminal prosecution;
 207 and
 208 (C) Whether policy, procedural, regulatory, or statutory changes are called for as a
 209 result of these findings.
 210 (2) The Adult Abuse, Neglect, and Exploitation Multidisciplinary Teams shall also
 211 establish procedures for the conduct of reviews by local review committees into abuse,
 212 neglect, or exploitation of disabled adults or elder persons and may obtain the assistance
 213 from disabled adults or elder persons."

214 **SECTION 5.**

215 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia
 216 Bureau of Investigation, is amended by adding a new Code section to read as follows:

217 "35-3-4.4.

218 (a) In any investigation of a violation of Article 8 of Chapter 5 of Title 16 or other criminal
 219 violation involving the abuse, neglect, or exploitation of a disabled adult, elder person, or
 220 resident, the director, assistant director, or deputy director for investigations shall be
 221 authorized to issue a subpoena, with the consent of the Attorney General, to compel the
 222 production of books, papers, documents, or other tangible things, including records and
 223 documents contained within, or generated by, a computer or any other electronic device,
 224 unless such records are wholly owned by the federal government.
 225 (b) Upon the failure of a person without lawful excuse to obey a subpoena, the director,
 226 assistant director, or deputy director for investigations, through the prosecuting attorney,
 227 may apply to a superior court having jurisdiction for an order compelling compliance.
 228 Such person may object to the subpoena on the grounds that it fails to comply with this
 229 Code section or upon any constitutional or other legal right or privilege of such person.
 230 The court may issue an order modifying or setting aside such subpoena or directing
 231 compliance with the original subpoena. Failure to obey a subpoena issued under this Code
 232 section may be punished by the court as contempt of court."

233 **SECTION 6.**

234 All laws and parts of laws in conflict with this Act are repealed.